EVIDENCE — *RES GESTAE* — CONTEMPORANEOUSNESS OF THE DECLARATION AND THE ACT. — In a suit on an accident insurance policy the evidence showed that the deceased was seized with a violent fit of coughing while brushing his teeth. As soon as he could speak, some fifteen minutes later, he told his wife that bristles from the tooth brush had choked him. *Held*, that this was admissible to show the cause of death as part of the *res gestae*. *Eby* v. *Travelers' Ins. Co.*, 102 Atl. 209 (Pa.).

The principal case raises the question of how nearly contemporaneous with the act in issue a declaration must be to be admissible in evidence as part of the *res gestae*. Some of the authorities virtually require that it be simultaneous. *Regina* v. *Bedingfield*, 14 Cox C. C. 341; *Parker* v. *State*, 136 Ind. 284, 35 N. E. 1105. The other authorities allow such declarations to come in, when in the opinion of the trial judge, they have that degree of spontaneity which negatives premeditation and hence possible fabrication. *Insurance Co.* v. *Mosley*, 8 Wall. (U. S.) 397; *Washington, etc. Co.* v. *McLane*, 11 App. D. C. 220. See WIGMORE, EVIDENCE, § 1750. Under the former rule time is apparently the determinant, and logically the most deliberate of self-serving evidence would be admissible if made simultaneously with the act. The latter rule makes the absence of deliberation the deciding factor, time being but an element in that consideration. See CHAMBERLAYNE, EVIDENCE, § 3007. The principal case is in accord with the second view and seems especially supportable in analogy with the comparatively recent extension of the spontaneity principle to declarations made by a person rendered unconscious, upon regaining consciousness, even though considerable time has elapsed. *Britton* v. *Washington, etc. Co.*, 59 Wash. 440, 110 Pac. 20; *Paris, etc. Co.* v. *Calvin*, 103 S. W. 428 (Texas); *Missouri, etc Co.* v. *Moore*, 24 Texas Civ. App. 489, 59 S. W. 282. *Cf. Sutton* v. *Southern Ry.*, 82 S. C. 345, 64 S. E. 401; *Christopherson* v. *Chicago, etc. Co.*, 135 Iowa, 409, 109 N. W. 1077.

FORFEITURE — EQUITY — SUIT TO QUIET TITLE FOR BREACH OF CONDITION SUBSEQUENT. — The plaintiff conveyed land to the grantor of the defendant, subject to building restrictions, and provided in the conveyance that "any violation of the foregoing conditions and instructions by the grantee, his heirs or assigns, shall work a forfeiture to all title in and to said lots." The defendant built contrary to the restrictions, and the plaintiff filed a bill in equity to quiet title. *Held*, that although equity would not work a forfeiture, the decree should be granted, since the title was already forfeited by the breach. *Sanderson* v. *Dee*, 168 Pac. 1001 (Okla.).

A condition subsequent, which provides that a given estate may be terminated, on breach of the condition, should be distinguished from a conditional limitation, which provides that the estate shall continue until the happening of an event. See 4 KENT, COMMENTARIES, 126 (*). Although in the latter case the happening of the event immediately vests the estate in the remainderman, breach of a condition subsequent does not *ipso facto* vest the estate in the grantor. Until the grantor enters or sues in ejectment, title remains in the grantee. *Lewis* v. *Lewis*, 74 Conn. 630, 51 Atl. 854; *Miller* v. *Levi*, 44 N. Y. 489. If the condition in the principal case were in favor of a stranger, it would be construed as a conditional limitation, to prevent the heir of the grantor from defeating the remainder by not entering. *Proprietors, etc.* v. *Grant*, 3 Gray (Mass.), 142. See 2 BLACKSTONE, COMMENTARIES, 155 (*). But, being in favor of the grantor, the language used seems to import a condition subsequent. *Cf. Ruch* v. *Rock Island*, 97 U. S. 693. Although equity will not work a forfeiture, it will protect legal title, even though acquired by forfeiture. *Lowrey* v. *Finkleslon*, 149 Wis. 222, 134 N. W. 344; *Shannon* v. *Long*, 180 Ala. 128, 60 So. 273. But where title is not yet in the grantor, a decree quieting title amounts to working a forfeiture, and would seem therefore to be improper.